



Virginia  
Regulatory  
Town Hall

[townhall.state.va.us](http://townhall.state.va.us)

## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board for Professional Soil Scientists and Wetland Professionals
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 145-20
<b>Regulation title</b>	Board for Professional Soil Scientists Regulations
<b>Action title</b>	Amend
<b>Document preparation date</b>	July 23, 2003

This information is required for executive review ([www.townhall.state.va.us/dbbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dbbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dbbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dbbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

The purpose of the proposed action is to adjust fees as necessary in accordance with § 54.1-113 of the Code of Virginia (Callahan Act). Any other changes that may be necessary may also be considered.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

---

§ 54.1-113 (Callahan Act) Regulatory boards to adjust fees – Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under §54.1-308 or §54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

§ 54.1-201.4 describes each regulatory board's power and duty to “levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department....”

§ 54.1-304.3 describes the power and duty of the Director to "collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards, and the Department shall be paid...."

§ 54.1-308 provides for compensation of the Director, employees, and board members to be paid out of the total funds collected. This section also requires the Director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

Fee adjustments are mandatory in accordance with these Code sections. The Board exercises discretion in how the fees are adjusted by determining the amount of the adjustment for each type of fee. The Board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

---

The intent of the proposed changes in regulations is to increase fees for applicants and regulants of the Board for Professional Soil Scientists. The board must establish fees adequate to support the costs of board operations and a proportionate share of the Department’s operations. By the close of the current biennium, fees will not provide adequate revenue for those costs.

The Department of Professional and Occupational Regulation (DPOR) receives no general fund money, but instead is funded from revenue collected for applications, renewals, examination fees, and other fees. The Department is self-supporting, and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenues collected on behalf of the boards fund the Department’s authorized special revenue appropriation.

The ability of the board to continue to process applications in a timely and accurate manner increases the level of public safety and welfare by ensuring that only those applicants that meet or exceed the requirements set forth in the statutes and regulations are granted certificates.

The Board for Professional Soil Scientists has no other source of revenue from which to fund its operations.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.)*

---

Fees will be increased as necessary to comply with the § 54.1-113 of the Code of Virginia. Any other changes which may be necessary may also be considered.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If there are no disadvantages to the public or the Commonwealth, please indicate.*

---

The primary issue for the proposed fee increase is the Department’s statutory requirement to comply with the Callahan Act.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the certificate to the regulated population; however, the impact of these changes on the income of the regulated population should not be of a great significance compared to level of income.

**Financial impact**

*Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:*

**Fiscal Impact of Proposed Regulation**

**Summary:**

The proposed regulations will increase fees for the Board for Soil Scientists to ensure that revenues are sufficient but not excessive to cover its ongoing operating expenses.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

**Fiscal Impact:**

	FY 2003	FY 2004	FY2005	FY2006
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Subprogram	560 44	560 44	560 44	560 44

Impact of Regulatory Changes:				
One-Time Costs	0	0	0	0
Ongoing Costs	0	0	0	0
Total Fiscal Impact	0	0	0	0
FTE	0.00	0.00	0.00	0.00

**Description of Costs:**

One-Time: There are no one-time costs associated with the proposed regulations.

Ongoing: There are no ongoing costs associated with the proposed regulations.

**Cost to Localities:** None anticipated.

**Description of Individuals, Businesses, or Other Entities Impacted:** The approximately 114 soil scientists regulated by the Board will be subject to increased fees.

**Estimated Number of Regulants:** The Department currently regulates 114 soil scientists.

**Projected Cost to Regulants:** The cost to the regulants will be \$300 per biennium for new applicants, and \$260 per biennium to renew the certificate.

**Financial Status and Projections  
Current Fees**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulants</u>
1996-98	-8,125	16,325	14,295	-6,095	-42.6%	81
1998-00	-6,095	21,550	16,974	-1,519	-8.9%	99
2000-02	-1,519	20,822	12,463	6,840	54.9%	105
2002-04	6,840	19,698	41,106	-14,568	-35.4%	114
2004-06	-14,568	40,275	48,575	-22,868	-47.1%	
2006-08	-22,868	40,275	54,015	-36,608	-67.8%	

**Fee History**

<u>Major Fee Type</u>	<u>1989</u>	<u>1995 / Current</u>	<u>t</u>
Application:	125	150	
Renewal:	175	175	

**Financial Status and Projections  
Proposed Fees**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulants</u>
1996-98	-8,125	16,325	14,295	-6,095	-42.6%	81
1998-00	-6,095	21,550	16,974	-1,519	-8.9%	99
2000-02	-1,519	20,822	12,463	6,840	54.9%	105
2002-04	6,840	19,698	41,106	-14,568	-35.4%	114
2004-06	-14,568	62,354	48,575	-789	-1.6%	
2006-08	-789	60,115	54,015	5,311	9.8%	

**Fee History**

<u>Major Fee Type</u>	<u>1989</u>	<u>1995 / Current</u>	<u>Proposed</u>
Application:	125	150	300
Renewal:	175	175	260

Note: The Wetlands Delineators program will become effective July 1, 2004, with fee revenue first collected in FY05. The projected deficit in 2004-06 and 2004-08 is due to start-up costs in the program, and is expected to be eliminated during the 2006-08 biennium.

**Expenditures by Type**

	<u>1998-00</u>	<u>2000-02</u>	<u>2002-04</u>	<u>2004-06</u>
Board Expenditures	3,010	3,755	9,447	11,163
Board Administration	0	1,125	1,571	1,856
Exams	5,450	4,824	14,347	16,953
Enforcement	7,365	4	10,290	12,160
Legal Services	653	473	1,572	1,858
Information Systems	98	704	1,120	1,323
Facilities	308	901	1,688	1,995
Agency Admin	88	657	1,040	1,229
Other/Transfers	2	20	31	36
	<u>16,974</u>	<u>12,463</u>	<u>41,106</u>	<u>48,575</u>

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

The Callahan Act requires that the Board’s fees be sufficient to cover its expenses so no alternatives exist which would allow the Board to remain in compliance with the requirements of the Callahan Act.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

No public comment was received.

**Impact on family**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

---

These fee increases are not anticipated to have any significant impact on Virginia's families.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

---

Adjust fees in 18 VAC 145-20-151.